IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 787 OF 2004

Smt. Shanta Tukaram Kasare
a Buddhist by religion, Occ. Retired
of Mumbai Inhabitant, residing at
Church of St. Vincent De Paul,
20th Road, Khar (West),
Mumbai 400 052.
(Since dispossessed presently residing
at C/o Ravindra Gambre,
Dr. Ambedkar Road, Pali Pathar,
Khar (W), Mumbai - 400 052. .. Petitioner

Versus

1. Father Milton Gonsalves
the sole trustee of the Church
of St. Vincent De Paul, 20th Road,
Khar (W), Mumbai - 400 052.

2. The Competent Authority (Rent Act)
Konkan Division, Bandra (E),
MHADA, Mumbai - 400 051.

3. The Addl. Commissioner,
Konkan Division, Mumbai. .. Respondents

Mr.S.S.H. Murthy for the petitioner.

Mr.A.Y. Sakhare with Mr.P.M. Havnur for respondent No.1.

CORAM : R.M.S. KHANDEPARKAR, J.

DATE : 18TH OCTOBER 2004

ORAL JUDGMENT :

1. Heard the learned advocates for the parties. Perused the records.

2. Rule. By consent, rule is made returnable forthwith.

3. The petitioner challenges the proceedings initiated by the respondent for eviction of the petitioner from the suit premises under section 22 of the Maharashtra Rent Control Act, 1999 ("the said Act" for short) as well as the orders passed by the Competent Authority dated 3rd March 1999 and by the Revisional Authority on 31st May 2003 on three grounds. The challenge is three-fold. Firstly, that the Competent Authority had no jurisdiction to entertain the proceedings in the absence of written agreement in relation to the alleged tenancy between the parties. Secondly, the application did not disclose the rent amount, if any, agreed between the parties payable for occupation of the premises and, in the absence of the basic ingredient of the lease agreement between the parties, there was no jurisdictional fact in existence which could enable the Competent Authority to take cognisance of the complaint, and, thirdly, that the original application discloses that the petitioner had retired from the services of the respondent on 31st December 1996 and the application was filed on 29th May 2002, i.e. much beyond the period of limitation prescribed for filing such application under section

22(2) of the said Act and there was neither prayer for condonation of delay nor the facts justifying the condonation of delay were disclosed in the application, and in those circumstances the respondent could not have been allowed to amend the plaint after service of summons to the petitioner in relation to the original plaint and there being no notice served upon the petitioner about the proposed amendment to the plaint.

4. As regards the first ground of challenge, the learned advocate for the petitioner has stated that in order to enable the Competent Authority to assume the jurisdiction to entertain the application under section 22 of the said Act, it is necessary that tenancy in favour of the occupant of the premises has to be created by the landlord under an agreement in writing and in the absence of such agreement in writing, there could be no occasion for the Competent Authority to entertain the application for eviction under the said provision of law. Drawing attention to section 16(f) of the said Act, it was submitted that in the absence of such agreement, the landlord is not without remedy of eviction of such service tenant as the said provision comprised under section 16 empowers the landlord to seek eviction of the service tenant, who was in service or employment of the landlord had ceased to be in service or employment of the landlord either before or after

commencement of the said Act. Referring to the pleadings in the plaint, it was argued on behalf of the petitioner that the said pleadings apparently disclose absence of any such agreement in writing as well as even the oral agreement.

5. The learned advocate for the respondent, on the other hand, submitted that in case of service-tenants, there may not be any specific agreement in writing and it may form part of the service conditions and, therefore, unless the party seeking to raise objection in that regard appears before the Competent Authority and raises an issue in that regard, there could be no occasion for the applicant landlord to establish his or her case about the existence of such agreement between the parties. Since the petitioner in the case in hand did not bother to appear before the Competent Authority and to seek leave to defend in the matter, there was no occasion for the respondent to establish the case as regards the agreement in writing between the parties and such a point cannot be allowed to be raised for the first time in writ jurisdiction.

6. Section 22(1) of the said Act provides that where any landlord intends to let out any premises or any part thereof belonging to him, to his employee, such landlord and the employee may enter into an agreement in

writing to create a service tenancy in respect of the such premises or any part thereof; and, notwithstanding anything contained in the said Act, the tenancy so created shall remain in force during the period of service or employment of the tenant with the landlord. Undoubtedly, therefore, the pre-requisite of section 22(1) is the existence of agreement in writing creating service tenancy in favour of the tenant by the landlord who is the employer of the tenant. In other words, the existence of agreement in writing between the applicant-landlord and the opponent-tenant is a must being a jurisdictional fact which would empower the Competent Authority to entertain an application for eviction of such tenant under sub-section (2) of section 22 of the said Act. When the matter relates to the jurisdictional fact, which would empower the statutory or quasi-judicial authority to assume the jurisdiction to deal with the dispute sought to be raised before it, such a jurisdictional fact must be disclosed from the pleadings placed before such authority by the party approaching such authority. It would not depend upon what defence the respondent would or could take in the matter, but it would essentially depend upon the case pleaded by the party approaching such authority for the relief under sub-section (2) of section 22 of the said Act. No amount of failure on the part of the respondent to raise such an issue would give jurisdiction to the

authority if the authority does not enjoy such jurisdiction under the statute under which it is created. It is well settled that the statutory or quasi-judicial authority created under special statutes have to exercise their function under the relevant statute within the scope and limitation prescribed under the statute under which they are created and for the purpose they are required to act, and in accordance with the provisions of such statute which prescribes the limitation for the scope of their power, and they have to act within the prescribed parameters accordingly. Being so, it is necessary for the applicant itself to disclose the fact about the existence of the written agreement between the parties when the applicant approaches the Competent Authority for the relief under section 22(2) of the said Act against the service-tenant on the ground that the tenant has ceased to be in the employment of the landlord.

7. It is also to be noted that such agreement is required to be registered in terms of the provisions comprised under section 55(1) of the said Act which provides that notwithstanding anything contained in the said Act or any other law for the time being in force, any agreement for leave and licence or letting of any premises, entered into between the landlord and the tenant or the licensee, as the case may be, after the

commencement of the said Act, shall be in writing and shall be registered under the Registration Act, 1908. Undoubtedly, the registration is expected in relation to the agreement between the parties after the enforcement of the said Act. However, section 22(1) by itself does not make any differentiation between the agreement which is registered or not. Nevertheless, the said provision specifically refers to the requirement of such agreement to be in writing.

8. Perusal of the pleadings in the plaint filed by the respondent before the Competent Authority discloses that the respondent was permitted to stay on the plot of land and was further permitted to construct a structure and to occupy the same. The pleadings in that regard are to be found in para 3 of the plaint. Para 4 speaks about the permission having been continued for occupation of the premises by the petitioner from time to time since 1970 onwards. Para 11 makes a categorical statement about the absence of any agreement being entered into between the parties. It reads thus:-

> "No agreement was entered into by and between the applicant and the respondent for payment of any rent / compensation to the applicant."

Apart from this statement, there is no other statement

in the application regarding any agreement in writing having been entered into between the parties at any point of time in relation to the suit premises. Undoubtedly, therefore, the primary requirement of section 22(1) of the said Act was not satisfied to enable the Competent Authority to take cognisance of the plaint under the said provision of the Act and to proceed against the petitioner for eviction from the suit premises in terms of the provisions of section 22 of the said Act.

9. It is however contended on behalf of the respondent that since the tenancy had commenced much prior to the enforcement of the said Act, there was no occasion for the agreement being entered into in writing, nevertheless from time to time the respondent used to execute the written note in relation to her occupation of the premises in question. Undoubtedly, there appears to be some statements under the thumb impression of the applicant, copies of which have been placed on record at pages 33 to 46 of the petition and they relate to different years. One of such statements reads to the following effect:-

> "I, the undersigned SHANTA KASARA agree and state that I am living in the school compound with my husband and three children only till

> such time as the Principal of St. Elias has no objection and that I shall leave within a day if he so wishes."

In fact, the pleadings to that effect are also to be found in para 4 of the plaint. However, the said statement, by no stretch of imagination, can be construed as an agreement of lease between the parties. In order to construe the relationship between the parties to be that of landlord and tenant, certainly the agreement must disclose a consideration for occupation of the premises by the tenant. It was sought to be contended by the respondent that in service tenancy, there is no need to fix any rent as such for the premises. Undoubtedly, there may not be specific quantum of rent to be paid by the service tenant to the employer landlord. However, in that regard, it would be necessary for the landlord to disclose the said fact in the plaint and approach the authority with necessary pleadings and supporting materials in that regard. Certainly quantum of rent may not be disclosed. some consideration will have to be revealed from the record and it would be necessary for the landlord to plead the said fact in the plaint and produce necessary material in support of such pleading. It is nowhere the case of the respondent that the respondent was having any such terms and conditions attached to her service with the

respondent. Besides, admittedly the petitioner had retired from the service of the respondent with effect from 31st December 1996 and yet she continued to occupy the premises and such occupation was with the consent of the respondent. Apparently, such an occupation cannot be said to be by virtue of the terms of the service conditions nor that has been the case of the respondent in the plaint.

10. For the reasons stated above, it is apparent that the plaint does not disclose the basic ingredient of section 22 which would enable the Competent Authority to take cognisance of the proceedings under section 22 and on that count itself, the entire proceedings before the Competent Authority are to be held to be ab initio bad and void in law.

11. Once it is apparent that the Competent Authority had no jurisdiction to entertain the application on the face of it, it is not necessary to deal with the other points sought to be raised by the petitioner in the matter.

12. Before parting with the matter, it is necessary to deal with the objection sought to be raised by the respondent in relation to the failure on the part of the petitioner to appear before the Competent Authority to

raise the plea regarding absence of jurisdiction in the Competent Authority to entertain the application. As already observed above, since such point relates to the jurisdiction of the Competent Authority to entertain the application itself, it goes to the root of the matter and it is purely a question of law to be decided on the face of the pleadings in the plaint and, therefore, the mere absence on the part of the petitioner to appear before the Competent Authority to raise the point in that regard will not disentitle the petitioner to raise such issue in writ jurisdiction nor it would legalise an act which is ab initio illegal on the part of the Competent Authority in taking cognisance of the plaint filed by the respondent.

13. It was also sought to be contended on behalf of the petitioner that in view of the entire exercise being illegal, the petitioner is entitled for restoration of the premises or at least restoration of the open area which was admittedly allowed to be occupied by the petitioner as the structure in occupation of the petitioner has already been demolished subsequent to the order of the Competent Authority. Undoubtedly, the demolition has been carried out consequent to the order passed by the Competent Authority and at that time there was no stay against the execution of such order. It is also revealed from the record that the petitioner had

approached the Bombay City Civil Court against the action proposed by the Municipal Corporation for demolition of the structure on the ground that the same was illegal. It is sought to be contended on behalf of the petitioner that the suit has been dismissed on account of structure having been demolished while is sought to be submitted on behalf of the respondent that the suit was dismissed for default. Indeed the order which is placed before the Court discloses that the suit has been dismissed for default. In any case, the suit having been dismissed and admittedly no steps having been taken by the petitioner either for restoration of the suit or for filing a fresh suit for restoration of the premises, the question of issuing direction in the writ jurisdiction to the respondent to restore the suit premises or to deliver the possession of the premises, which were allowed to be occupied by the respondent, does not arise. The remedy for the petitioner in that regard lies somewhere else. It will not be proper for this court in writ jurisdiction to issue any such direction as there are bound to be disputed questions of fact and admittedly there were proceedings sought to be initiated by the Municipal Corporation on the ground that the structure was illegal. In case the petitioner seeks necessary redress in that regard, the observations made herein for disposal of the petition in relation to the alleged structure and the plot shall not come in the

way of the court or the authority before whom the parties may appear and all the contentions in that regard by both the parties shall have to be decided in accordance with the provisions of law.

14. In the circumstances, therefore, the petition partly succeeds. The impugned orders passed by the Competent Authority and the Revisional Authority are hereby held to be ab initio bad in law as the Competent Authority had no jurisdiction to entertain the proceedings which were sought to be initiated in the matter in hand by the respondent. Rule is made absolute accordingly with no order as to costs.

15. Authenticated copy of this order be made available to the parties.

(R.M.S. KHANDEPARKAR, J.)